IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 74 OF 2005

SHRI SEBASTIAO ALIAS SEBY D'COSTA ....Petitioners
AND ORS.

Versus

STATE OF GOA AND ORS. ....Respondents

Mrs. A.A. Agni, with Mrs. N. Narvenkar Advocates for the Petitioners.
Shri S.S. Kantak, Advocate General With Mr. S.R. Rivonkar, Govt. Advocate For R. 1 To 3.

Coram:- R. M. LODHA &
N. A. BRITTO, JJ.

Date:- 27th September, 2005

P.C.:

Heard Mrs. Agni, the learned counsel for the petitioners and Mr. S.S. Kantak, the learned Advocate General for Respondents No.1, 2 and 3.

2. By Notification dated 9th January, 2004 published in the Official Gazette, Government of Goa on 22nd January, 2004 the subject land being Survey Nos.141/2, 141/3, 141/12, 141/13, 141/14, 141/16 and 141/17 was proposed to be acquired for development of Goa Government Village School Playground at Macazana, Salcete Taluka. The petitioners raised their objections to the proposed acquisition. The Deputy Collector (Land Acquisition) sent his report under Section 5-A of the Land Acquisition Act overruling the petitioners' objections and thereafter declaration under Section 6 of the Land Acquisition Act was issued and published. By means of the said petition, the petitioners seek to challenge the Notification dated 9.1.04 issued under Section 4 of the Land Acquisition Act, the report dated 20.2.04 under Section 5-A of the Land Acquisition Act and the declaration dated 27.2.05 under Section 6 of the Land Acquisition Act.

3. The learned counsel for the petitioners submitted that there were already few playgrounds available in the area and that the Government school has only two students and therefore the acquisition of the subject land for school playground is not in good faith. The learned counsel submits that the Deputy Collector (Land Acquisition)failed to objectively consider the petitioners' objections and overruled the same without any justifiable reason. The learned counsel, thus, submitted that the acquisition of the subject land deserves to be quashed and set aside.

4. That the subject land is being acquired for Government Village School Playground at Macazana, Salcete Taluka is not in dispute. The said village has a population of about 2000. It is also true that there are very few students studying in the Government village school. The question that is required to be considered by us is whether the acquisition of the subject land is not in accordance with law and suffers from any legal infirmity.

5. As a matter of fact there are no allegations of malafides or that the acquisition of the subject land is being done in colourable exercise of power vested in the State Government. The thrust of the argument is that there are only two students in the Government village school and that the other playgrounds are available in the area and, therefore the subject land is not required for the playground.

6. On 30th August, 2005 we directed the learned Advocate General to file an additional affidavit on the following aspects :-

" (1) The number of Villages in the State of Goa having population of about 2000 persons.

(2) How many of such Villages which have the population of 2000 or nearabout have the playgrounds and the sports facilities.

The details of 31 Villages in Goa where the Directorate of Sports have developed similar grounds under the Government plan/scheme must also be provided in the additional affidavit. "

7. In compliance thereof the additional affidavit has been filed by the Director of Sports and Youth Affairs on 12th September, 2005. From the said affidavit it transpires that there are in total 347 villages in Goa having population upto 2000 and less. 135 villages are in North Goa District and 89 villages in South Goa District. Under the Government Village School Playground Scheme, the Government has undertaken development and construction of full fledged playgrounds in 33 villages having population upto 3000, out of which 19 villages have population of 2000. In all 11 playgrounds have been completed except some minor works and the said playgrounds are being used by villagers/schools. In 7 villages, the development work of playgrounds is in progress and in remaining 15 villages the acquisition of the land needed for the playgrounds has commenced. It is further stated that at the instance of the Village Panchayat, the Sports Department moved a proposal for development of playground under the Government Village School Playground scheme and the acquisition of the subject land was done.

8. The petitioners have replied to the additional affidavit filed by the Director of Sports by filing an affidavit-in-rejoinder on 26th September, 2005. The substance of the statement made in the affidavit is that most of the playgrounds have not been developed by the Directorate of Sports, rather they are quite old.

9. Having considered the entire material available before us, we find that it was the Village Panchayat who mooted the proposal for development of playground under the Village School playground scheme in village Macazana. The said land was identified as proper for development of the playground. It is true that the petitioners submitted that their objections pursuant to the Notification issued under S.4 of the Land Acquisition Act, but the said objections were not found meritorious.

In his report made under Section 5-A the Deputy Collector observed that the existing three playgrounds were not proper. One is quite small, the other has no access and the third has no feasibility for improvement. The Deputy Collector in his report observed that by development of the proposed playground the official tournaments can be held. We find no infirmity in the report of the Deputy Collector. The students in the Government village school may not be large, but if a full fledged playground is prepared and developed in the village for holding official tournaments and sports activities, it cannot be said that the subject lands was not needed for public purpose.

10. In our considered view, the acquisition of the subject land does not suffer from any legal infirmity warranting interference from this Court under Article 226 of the Constitution. The Writ Petition does not deserve to be admitted. Dismissed in limine.

R. M. LODHA, J.

N. A. BRITTO, J.

sl.